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19 **Pro Hac Vice*

20 *Attorneys for Plaintiff and the Putative Class*

21 **UNITED STATES DISTRICT COURT**

22 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

23 **Edwardo Munoz**, individually and on
24 behalf of all others similarly situated,

25 Case No. 2:18-cv-03893-RGK-AGR

26 Plaintiff,

27 **PLAINTIFF'S NOTICE OF
28 MOTION AND MOTION FOR
REVIEW OF MAGISTRATE
JUDGE'S MINUTE ORDER
(Dkt. 56)**

29 v.
30 **7-Eleven, Inc.**, a Texas corporation,

31 Defendant.

32 *[Filed concurrently with [Proposed]
33 Order]*

34 Date: April 22, 2019

35 Time: 9:00 a.m.

36 Judge: Hon. R. Gary Klausner

37 Place: Courtroom 850

38 Complaint Filed: May 9, 2018

1 **PLEASE TAKE NOTICE** that on April 22, 2019, at 9:00 a.m. at the United
2 States District Court for the Central District of California, Plaintiff Edwardo Munoz
3 (“Plaintiff” or “Munoz”) will and hereby does move before the Honorable R. Gary
4 Klausner for review of and an order reversing Magistrate Judge Alicia G.
5 Rosenberg’s Minute Order Re: Further Order on Telephonic Discovery Conference.
6 (Dkt. 56.)

7 This motion is made pursuant to Federal Rule of Civil Procedure 72(a) and
8 Central District of California Local Rule 72-2.1. As explained in the accompanying
9 Memorandum, the Magistrate Judge’s denial of Plaintiff’s discovery request is
10 based on a state privacy concern that does not apply to the present action—a case of
11 federal question jurisdiction in which the classes have already been certified. At this
12 stage, disclosure of class member contact information does not implicate the
13 privacy concerns of pre-certification discovery. Further, disclosure of this
14 information to Plaintiff’s counsel will not burden 7-Eleven.

15 This motion is based on this Notice of Motion, the attached Memorandum of
16 Points and Authorities, the pleadings and papers on file herein, and such other
17 materials as may be presented to the Court at the time of the hearing.

18
19 Dated: March 19, 2019

Respectfully submitted,

Edwardo Munoz, individually and on behalf
of all others similarly situated,

By: /s/ Patrick H. Peluso
One of Plaintiff’s Attorneys

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16 **Pro Hac Vice*

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 The Court should reverse Magistrate Judge Rosenberg's Minute Order
4 denying Plaintiff's request that Defendant 7-Eleven, Inc. ("Defendant" or "7-
5 Eleven") provide class member contact information to his counsel. In her Minute
6 Order, Magistrate Judge Rosenberg cites to the "burden" that *Belaire-West* notice
7 would present as disproportionate to the needs of the case. However, as explained
8 below, the *Belaire-West* standard is not implicated by this action. The notice
9 referred to in the Minute Order is a state court standard for California laws and
10 cases—the present action is a federal question, brought in federal court, which
11 seeks relief for applicants nationwide. Further, the *Belaire-West* notice concern
12 arises routinely in cases of pre-certification discovery. Here, however, the class and
13 subclass have been certified. Likewise, because 7-Eleven must compile class
14 member contact information to provide to the administrator, providing the same
15 information to Plaintiff's counsel will impose no burden. Accordingly, Plaintiff
16 asks the Court to review and ultimately reverse Magistrate Judge Rosenberg's
17 Minute Order denying Plaintiff's request.

18 **II. ARGUMENT**

19 **A. The *Belaire-West* Notice Is A State Court Standard Inapplicable
20 To The Present Action—The Classes Have Been Certified, And
21 The Claims Present A Federal Question.**

22 In her Minute Order denying Munoz's request, Judge Rosenberg determined
23 that the request for class member contact information was "outweighed by the
24 burden of any *Belaire-West* notice" that the disclosure would supposedly require.
25 (Dkt. 56, at 2.) However, the *Belaire-West* notice standard is a pre-certification,
26 California state court standard that is inapplicable to the present action. As such,

1 disclosure of the class members contact information does not impose any notice
 2 burden. Thus, the Court should reverse the Magistrate Judge's Minute Order.

3 As early as 2007, the California courts recognized that seeking contact
 4 information for potential class members could interfere with their right to privacy,
 5 albeit in a manner less serious than with sensitive information (e.g. medical
 6 history). *Pioneer Electronics (USA), Inc. v. Superior Court*, 150 P.3d 198, 205 (Cal.
 7 2007). In *Belaire-West*, the California Court of Appeal reiterated this point, finding
 8 that contact information deserves some privacy protection. *Belaire-West*
 9 *Landscape, Inc. v. Superior Court*, 57 Cal.Rptr.3d 197, 202 (Cal. Ct. App. 2007).
 10 However, because contact information is “not particularly sensitive,” providing the
 11 putative class members with written notice and an opportunity to opt-out of the
 12 disclosure is sufficient to protect their privacy. *Id.* at 203. This notice/opt-out
 13 procedure is what Judge Rosenberg referred to as *Belaire-West* notice. (See Dkt. 56,
 14 at 2.)

15 Appropriate as such notice may have been in *Pioneer* and *Belaire-West*, it is
 16 inapplicable to the present action as a result of several key distinctions. First, the
 17 right to privacy at issue in *Belaire-West* is a state privilege—thus, the notice
 18 standard is rooted entirely in California state court and state law proceedings. See
 19 *Pioneer*, 150 P.3d at 199–200; *Belaire-West*, 57 Cal.Rptr.3d at 198; *Crab Addison,*
 20 *Inc. v. Superior Court*, 87 Cal.Rptr.3d 400, 402 (Cal. Ct. App. 2008). The third-
 21 party privacy rights at issue do not represent a federally-recognized privilege; to the
 22 extent that federal district courts have accepted these privacy rights, they do so as a
 23 matter of applying *state* laws and privileges when federal jurisdiction is based on
 24 diversity of citizenship. *Bright v. Dennis Garberg and Assoc., Inc.*, No. CV 10-
 25 7933 AHM(JCX), 2011 WL 13150146, at *6 (C.D. Cal. Nov. 15, 2011) (“Third
 26 party privacy is a state recognized privilege applicable in a federal action based on
 27 diversity jurisdiction.”); *see also*, e.g., *Goro v. Flowers Foods, Inc.*, No. 17-cv-

1 02580-JLS-JLB, 2018 WL 3956018, at *2 (S.D. Cal. Aug. 17, 2018); *Martin v.*
 2 *Sysco Corp.*, No. 1:16-cv-00990-DAD-SAB, 2017 WL 4517819, at *4 (E.D. Cal.
 3 Oct. 10, 2017); *Sandres v. Corrections Corp of Am.*, No. 1:09-cv-01609 OWW
 4 JLT, 2011 WL 475068, at *2 (E.D. Cal. Feb. 4, 2011); *Hill v. Eddie Bauer*, 242
 5 F.R.D. 556, 562 (C.D. Cal. 2007).

6 In the present case, state law and state privileges are inappropriate because
 7 Plaintiff's case is based on federal question jurisdiction. (Am. Compl., dkt. 23 at ¶
 8 10.) Munoz brings this action under the Fair Credit Reporting Act, a federal statute.
 9 (*Id.*) Further, Plaintiff seeks relief for himself and “[a]ll persons in the United
 10 States” who were subjected to the same unlawful practice by 7-Eleven.¹ (*Id.* ¶ 21.)
 11 Munoz seeks relief in federal court, on behalf of a nationwide class of applicants
 12 and employees, for violation of a federal statute. Accordingly, California's state
 13 privilege for third-party privacy—and the *Belaire-West* notice that such privilege
 14 entails—are inapplicable to this case.

15 Additionally, Plaintiff's request is distinguishable from the requests made in
 16 *Belaire-West* and related cases. In both *Pioneer* and *Belaire-West*, the request for
 17 contact information was a part of *precertification* discovery, relating to *putative*
 18 class members. *Pioneer*, 150 P.3d at 201; *Belaire-West*, 57 Cal.Rptr.3d at 198. The
 19 same is true for cases that have followed. *See, e.g., Hill*, 242 F.R.D. at 563; *Crab*
 20 *Addison*, 87 Cal.Rptr.3d at 402; *Martin*, 2017 WL 4517819, at *3. This distinction
 21 is important because, rather than searching for potential clients or claims, the
 22 contact information Plaintiff seeks is limited to *actual* class members—the class
 23 and subclass have been certified, which means that the rights of these applicants
 24 will be determined in this case.

25
 26 ¹ Plaintiff also seeks relief under California law for a subclass of California
 27 residents. (Am. Compl. ¶ 21.) However, the claim is before the Court as a function
 28 of supplemental jurisdiction—diversity jurisdiction is not implicated. *See* 28 U.S.C.
 § 1337(a).

1 Unlike the cases in which *Belaire-West* notice was appropriate to temper
 2 precertification searches for potential claimants, the contact information Plaintiff
 3 seeks will be used to verify class membership and, if necessary, to contact them
 4 regarding relevant information they may possess regarding potential defenses 7-
 5 Eleven may assert. “In a class action, fellow class members are potential percipient
 6 witnesses to alleged illegalities, and it is on that basis that their contact information
 7 becomes relevant.” *Williams v. Superior Court*, 398 P.3d 69, 80 (Cal. 2017). Even
 8 if the *Belaire-West* notice standard were appropriate in a federal question case
 9 (which it is not), California courts have recognized that the opt-out notice is not
 10 suitable for a certified class: “a percipient witness’s willingness to participate in
 11 civil discovery has never been considered relevant—witnesses may be compelled to
 12 appear and testify whether they want to or not.” *Puerto v. Superior Court*, 70
 13 Cal.Rptr.3d 701, 708 (Cal. Ct. App. 2008).

14 Magistrate Judge Rosenberg’s denial of Munoz’s request on the basis of the
 15 “burden” that *Belaire-West* notice would create was made in error. The notice is
 16 based on a state-recognized privilege that is inapplicable to this case. Further, even
 17 if it were germane to Plaintiff’s cause of action, the contact information is not
 18 sought for precertification discovery and thus does not warrant *Belaire-West* notice.
 19 Accordingly, the Court should reverse Judge Rosenberg’s Minute Order denying
 20 disclosure of his fellow class members’ contact information.

21 **B. Disclosing contact information of the certified classes to Plaintiff
 22 poses no burden to 7-Eleven.**

23 Because *Belaire-West* notice is not necessary or applicable to the disclosure
 24 that Munoz seeks, there is no identifiable burden to justify denying Plaintiff’s
 25 request. Thus, Judge Rosenberg’s decision to withhold class member contact
 26 information from Plaintiff lacks basis, and it should be reversed.

27

28

1 As explained above, at this stage in the case, disclosure of class member
 2 identities and contact information to Plaintiff and his counsel does not implicate the
 3 privacy concerns identified in cases like *Pioneer* and *Belaire-West*. The Court
 4 certified the classes on October 18, 2018. (Dkt. 43.) Consequently, Plaintiff and his
 5 counsel are responsible for fairly and adequately litigating on behalf of all class
 6 members—currently estimated at tens of thousands of job applicants across the
 7 country. In order to best represent the class, Plaintiff has asked 7-Eleven to provide
 8 contact information for the class members, which will, among other things, enable
 9 the verification of class membership.

10 Plaintiff's request creates no burden for 7-Eleven. As a result of the Proposed
 11 Notice Plan,² 7-Eleven is already required to provide contact information for the
 12 class members to the administrator tasked with disseminating notice. In other
 13 words, Plaintiff is merely requesting that 7-Eleven provide to his counsel the same
 14 document that will be provided to the third-party administrator.

15 Magistrate Judge Rosenberg has provided no meaningful grounds to support
 16 withholding this information from Plaintiff, particularly when it will enable him and
 17 his counsel to better represent and pursue the interests of the class.

18 **III. CONCLUSION**

19 The Minute Order denying Plaintiff's request should be reversed. The cited
 20 *Belaire-West* notice that would supposedly outweigh any need for class member
 21 information is plainly inapplicable to this action, and it is the only justification that
 22 Judge Rosenberg provided in her Order. 7-Eleven has already agreed to provide
 23 such information to the settlement administrator, and providing the same
 24 information to Plaintiff and his counsel will impose no burden on any party.

25
 26
 27 ² The Proposed Notice Plan was approved by the Court on February 12, 2019. (Dkt.
 28 50.)

1 Accordingly, the Court should reverse the Minute Order, grant Plaintiff's request,
2 and award any such relief as it deems necessary and just.

3
4 Respectfully Submitted,

5 **EDWARDO MUNOZ**, individually and on
6 behalf of all others similarly situated,

7 Dated: March 19, 2019

8 By: /s/ Patrick H. Peluso
One of Plaintiff's Attorneys

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above titled document was served upon counsel of record by filing such papers via the Court's ECF system on March 19, 2019.

/s/ Patrick H. Peluso